



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

File

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: [REDACTED]

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number: [REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(6). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated under the laws of the state of [REDACTED] on [REDACTED]. Your Articles of Agreement (Articles) state that you were established to enhance economic development and educational opportunities by facilitating the improvement of telecommunication infrastructure and related services available to business, institutional and local users. Your application did not include a copy of your bylaws.

You state that you evolved from the [REDACTED], which was begun in [REDACTED] by [REDACTED], an organization recognized as exempt under section 501(c)(3) of the Code. Meetings were held with representatives of businesses, industry, colleges and hospitals in the region, and a survey of 54 organizations was done. [REDACTED] determined that there was sufficient need and demand to warrant a regional customer aggregation effort for telecommunications services. The [REDACTED] was formed as a task force, and a technology committee was formed to specify needs, prepare a request for proposals and establish criteria for selection of vendors. Other committees were formed for marketing and for public information. Criteria for the selection of vendors and requests for proposals were distributed to prospective vendors, and from seven vendor proposals, [REDACTED] were chosen. A decision was then made to spin off [REDACTED] as a section 501(c)(6) organization to proceed with formal agreements with [REDACTED]. The action was to be effective as of [REDACTED], with you assuming the mission, obligations and resources of the [REDACTED]. You state that the assets of the committee, \$[REDACTED] were transferred to you on [REDACTED].

[REDACTED]

You state that your mission is to make high-speed, high-capacity broadband network access available and affordable to businesses and public institutions in the [REDACTED]. You further state that your mission is to enhance economic development and educational opportunities by facilitating the improvement of telecommunications infrastructure and related services available to business, institutional and other local users.

In your letter dated [REDACTED], you state that you were established to address the digital divide issue in [REDACTED] where all institutions have lacked access to affordable broadband telecommunications service. You also state that you are in the process of achieving this by aggregating demand for telecommunications service in order to achieve lower rates and high quality services from a tier one telecommunication carrier ([REDACTED]) who would otherwise not be able to compete with the local incumbent carrier ([REDACTED]).

You further state that the only common business interest of your members is that they wish to get telecommunication services at a low rate under favorable terms, and that your purpose is to facilitate this effort. You promote this common business interest by seeking and negotiating the best rates and services from telecommunications providers, educating participating businesses and institutions on telecommunications issues, monitoring telecommunication legislation, and making personal calls to businesses to tell them about the benefits of aggregation.

You have allocated [REDACTED]% of your time and resources to organization and [REDACTED]% to aggregation, customer advocacy and membership recruitment. You project future allocations to be [REDACTED]% and [REDACTED]%, respectively, for the activities. You expect the future allocation of your time and resources for advocacy and other telecommunications initiatives to remain at [REDACTED]%.

In describing the kind of educational economic development in which you will be involved in your letter dated [REDACTED] you state that your primary purpose is the aggregation of demand to obtain lower telecommunication costs, and because education and outreach are central to this effort, all of your activities and expenditures are related in some way to the aggregation effort. You state that it is fair to say that all of your time and resources are expended in some manner on your purpose of providing the opportunity for lower telecommunications and broadband service cost to participants.

Your agreement with the telecommunications providers requires you to exercise best efforts to aggregate demand by enrolling customers in [REDACTED]. Specifically, you agree to use your best efforts to secure purchase commitments from your members to take services in a specified amount. You further agree to support your marketing efforts with certain public relations services that will include, but not be limited to, press releases publicizing the efforts of both you and the service provider in fulfilling your respective obligations.

In the letter, you state that you do not have members for the purposes of governance, and membership is optional for businesses and other institutions. However, only your members are eligible for the reduced rates that you negotiated with [REDACTED]. Your members pay an enrollment fee of \$ [REDACTED] and a user's fee of [REDACTED]% of their billings by [REDACTED] and [REDACTED].

[REDACTED], exclusive of taxes. Providers of telecommunications services other than internet service providers are not eligible for membership.

You also state that you do not provide particular services to individual persons or members that are not otherwise supplied generally to all business and institutions participating in the effort to lower telecommunication services. You describe your mission as being to serve all businesses and other institutions that pay for telecommunications. You identify these businesses and organizations as those with at least \$ [REDACTED] per month of telecommunication costs and having enough business to justify a T1 bandwidth. You characterize yourself as a facilitator for the delivery of telecommunications services to your members, and state that you make your members aware that the telecommunications provider with whom you have negotiated discounted services will honor the prices and terms of its agreement with you.

In your application, you identify your website address as [REDACTED]. The homepage for the website states that you aggregate demand for broadband and other telecommunications services for [REDACTED] businesses and institutions. According to your website, you will monitor the performance of the vendor, and if there are problems, you will survey members regarding which vendor to contract with when the agreement expires. Your website also states that you will keep in contact with members from time to time and seek ways to improve the services of the provider.

According to your webpage dated [REDACTED], you held meetings with [REDACTED] in order to determine how service to your members will be affected by the provider's bankruptcy filing. Your newsletter dated [REDACTED] consists of articles related to your telecommunications providers' bankruptcies, and how they will affect the services that are provided to your members.

On the website potential members are advised to talk to you directly so that you can discuss their needs in detail and get them together with [REDACTED]. Those who will be undertaking an extensive amount of work to change IP addresses are advised that the best course of action would be to discuss the matter with you and a [REDACTED] representative. The website further states that you will assist members in identifying local consultants regarding services or products that are needed to establish service but which are not furnished by the telecommunications providers.

In addition to lower telecommunications rates and services, you state in your application that you will continue to offer other benefits to your members in the form of workshops, users' groups and other training and networking opportunities.

You provided a copy of an employment agreement with [REDACTED] as your General Manager and a copy of an addendum to an employment contract with [REDACTED] as an outside consultant. [REDACTED] responsibilities as General Manager include the management of the aggregation of customers consistent with the best efforts obligations in your agreements with the telecommunications providers and the monitoring of the providers' performance in pursuit of the objective of maximum quality of service for your members. The

[REDACTED]

agreement states that past experience with the providers indicates that more time and effort would be required for "trouble-shooting" than originally anticipated. In the addendum to [REDACTED] contract, you state that because of the bankruptcy filing of [REDACTED] and your inability to proceed with the sale of lines as originally predicted, you could not offer him a longer contract.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade; not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides, in part, that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

In Growers Cold Storage Warehouse Co. v. Commissioner, 17 B.T.A. 1279 (1929); an organization that operated a cold storage warehouse for its members on a cooperative basis was denied exemption under section 231(7) of the Revenue Act of 1921 [which corresponds to section 501(c)(6) of the Internal Revenue Code of 1986] because the organization's primary activities were found to constitute the performance of particular services for individual persons. The Court found that even though the organization was not organized for profit and no part of the net earnings inured to the benefit of any private stockholder or member, the members' combining in order to save expenses did not constitute a business league.

In Produce Exchange Stock Clearing Association v. Helvering, 71 F.2d 142 (2nd Cir. 1934), the court held that under the doctrine of *noscitur a sociis* an exempt business league must possess the general characteristics of the other organizations with which the statute grouped it (chambers of commerce and boards of trade). A stock clearing association was denied exemption as a business league under section 103(7) of the Revenue Act of 1928. The court found that nothing was being done by the organization to advance the interests of the community or to improve the standards or conditions of a particular trade, and that the purpose of the organization was to provide a business economy or convenience for individual traders.

In Retailers Credit Association of Alameda County v. Commissioner of Internal Revenue, 90 F.2d 47 (9th Cir. 1937), the Court described a chamber of commerce as relating to all businesses in a particular geographic location while a board of trade may relate to only one or more lines of business.

In Apartment Operators Association v. Commissioner, 136 F.2d 435 (9th Cir. 1943),

exemption was denied to an organization formed to facilitate the purchase of supplies and equipment and to supply management services for its members. In subjecting the organization to the test of the regulations, the court found that the organization did not appear to answer the description of a business league. Among other things, the organization performed particular services for individual persons, as witnessed by activities which included the making of arrangements for direct purchases by members at discount. The organization failed to establish that these activities were mere incidents in a broader civic or charitable program.

In Credit Bureau of Greater New York v. Commissioner, 162 F.2d 7 (2nd Cir. 1947) the court held that a membership organization which performed the services of a credit bureau for its members was not an exempt business league although its services were performed at a figure approximating its costs.

In Evanston-North Shore Board of Realtors v. United States, 320 F.2d 375 (Ct. Cl. 1963), cert. denied, 376 U.S. 931 (1964), the Court of Claims held that a real estate board whose primary purpose and activity was the operation of a multiple listing service for its members was not exempt under section 501(c)(6) of the Code. The court stated that where such a "service is operated primarily for individual members as a convenience and economy in the conduct of their respective businesses, rather than for the improvement of business conditions within the [industry] generally . . . the operation is not an activity warranting an exemption under the statute." In addition, the court found that "(w)hen each member contributes in proportion to what he receives, it is a strong indication the benefits received are not 'inherently group benefits'."

In Indiana Retail Hardware Association, Inc. v. United States, 366 F.2d 998 (Ct. Cl. 1966), an organization formed to facilitate the purchase of supplies and equipment and to supply management services for its members was found not to be exempt under section 501(c)(6) of the Code. The court, citing Evanston-North Shore Board of Realtors, supra, found that a member's contributing in proportion to what he received was a strong indication that the benefits were not inherently group benefits. The high percentage of income obtained by the organization from performing particular services for individuals as a convenience and economy in their business, along with its other income-producing activities, and the amount of time devoted by employees of the organization to the performance of these services was sufficiently substantial so that the activities could not be said to be merely incidental. In making its ruling, the court considered the time devoted by the organization's employees to these activities as compared with that spent on activities for the common benefit.

In Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F.2d 684 (CA2 NY 1973), cert. den. 419 U.S. 827, the court denied exemption under section 501(c)(6) of the Code to a cooperative that was neither organized for profit nor engaged in traditionally profit-motivated activity where individual benefits were precisely proportional to the member's financial involvement in the organization. The court stated that "(w)here, as here, those individual benefits are precisely proportional to the member's financial involvement in the organization, the fundamentally non-exempt purpose of providing a necessary service at reduced cost becomes

too clear to be ignored." The court found that there was only a small, incidental benefit gained by plumbers in the community as a whole from the organization's activities. The organization failed to prove that its primary purpose was the improvement of business conditions as distinguished from the performance of particular services for individual persons.

In National Muffler Dealers Association, Inc. v. United States, 440 U.S. 472 (1979), affirming 565 F.2d 845 (2nd Cir. NY 1977), the Supreme Court held that an organization that did not draw its members from a broad base and whose activities reflected its limited constituency failed to qualify for exemption under section 501(c)(6) of the Code. Here, the organization's principal activity was to serve as a bargaining agent for its members in dealing with a for profit entity.

In MIB, Inc. v. Commissioner of Internal Revenue Service, 734 F.2d 71 (1st Cir. 1984), exemption as a business league under section 501(c)(6) of the Code was denied to an organization whose activities consisted of providing particular services to its members in the form of transmitting information that could be used in decisions affecting their members' business operations. The court distinguished the organization from "classical" business leagues of chambers of commerce and boards of trades, groups that chiefly perform services for members collectively rather than perform specific services for their members.

In National Prime Users Group, Inc. v. United States of America, 667 F. Supp. 250 (1987), the court denied exemption as a business league to an organization that it found failed to serve an entire industry or all components of an industry within a geographic area in its providing information and communication to the users of a particular manufacturer's equipment.

In Guide International Corporation v. United States of America, 948 F.2d 360 (7th Cir. 1991), the court found that although the organization's stated purpose was to facilitate the use and exchange of information regarding data processing equipment in general, the primary benefit inured to a company that was only a segment of the mainframe computer business, not a line of business. The district court had rejected the organization's argument that its activities improved several lines of business by enabling its members to perform data processing more efficiently, ruling that the organization failed to meet the line of business test because it primarily served the interests of IBM and the users of IBM computers rather than the data processing industry as a whole. The circuit court agreed, and denied the organization exemption under section 501(c)(6).

Rev. Rul. 56-65, 1956-1 C.B. 199, holds that an organization whose principal activity consists of furnishing particular information and specialized individual service to its individual members, through publications and other means to effect economies in the operation of their businesses, is performing particular services for its members.

Rev. Rul. 59-234, 1959-2 C.B. 149, holds that a real-estate board whose primary purpose or activities is the operation of a multiple listing system is not exempt from Federal income tax as an organization described in section 501(c)(6) of the Code. The operation of the multiple listing system was designed to render particular services for individual members

as a convenience and economy in the conduct of their respective businesses.

Rev. Rul. 59-391, 1959-2 C.B. 159, holds that an organization that was created for the purpose of exchanging information on business prospects and had no common business interest other than a desire to increase sales of members was not exempt as a business league under section 501(c)(6) of the Code. Such an organization does not have activities directed to the improvement of business conditions of one or more lines of business, but rather to the promotion of the private interests of its members. In order to be exempt, the activities of the organization must be directed to the improvement of business conditions of one or more lines of business.

Rev. Rul. 66-338, 1966-2 C.B. 226, holds that an organization's activities that provide members with an economy and convenience in the conduct of their individual businesses by enabling them to secure supplies, equipment, and services more cheaply than if they had to secure them on an individual basis constitute the performance of particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade as a whole. Such organizations are not exempt under section 501(c)(6) of the Code.

Rev. Rul. 68-264, 1968-1 C.B. 264, holds that the operation of a traffic bureau is a convenience and economy to members in their businesses, resulting in savings and simplified operations. Such an activity constitutes the performance of particular services.

Rev. Rul. 73-411, 1973-2, C.B. 180, clarifying Rev. Rul. 64-315, 1964 C.B. 147, holds that in the case of a chamber of commerce or similar organization exempt under section 501(c)(6) of the Code, membership must be open generally to all business and professional men in the community. Trade associations or business leagues are similar to chambers of commerce or boards of trade, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry.

Rev. Rul. 74-81, 1974-1 C.B. 135, holds that an organization whose principal activity was to provide its members with group workmen's compensation insurance that was underwritten by a private insurance company was not exempt under section 501(c)(6) of the Code. In carrying out this activity, the organization relieved its members of having to obtain insurance on an individual basis, resulting in a convenience in the conduct of their businesses. The organization rendered particular services for individual persons as distinguished from the improvement of business conditions in the contracting and related industries generally.

Rev. Rul. 78-225, 1978-1 C.B. 159 holds that an organization that is operated to promote the common business interests of its members and that has a voluntary membership open to all businesses in a neighborhood community where the majority of the members are located qualifies for exemption under section 501(c)(6) of the Code.

Rev. Ruling 83-164 holds that an organization whose primary activity is promoting the

common business interests of users of one particular brand of computers does not qualify for exemption from federal income tax as a business league under section 501(c)(6) of the Code. Such organizations fail to meet the line of business test as they serve only a "segment of a line of business."

You have failed to establish that you have been organized so that your activities will serve to advance the interests of the business community as a whole rather than the private interests of your members. In addition, you have not established that under the terms of the contract you have entered into with the telecommunications providers, substantial benefits will not inure to [REDACTED] and [REDACTED].

Section 1.501(c)(6)-1 of the regulations provides that a business league is an organization of the same general class as a chamber of commerce or board of trade. In interpreting section 501(c)(6) of the Code and the applicable regulations, the courts have applied the doctrine of *noscitur a sociis*, holding that certain characteristics are shared by business leagues, chambers of commerce and boards of trade alike so that the absence of a given characteristic could lead to a denial of exemption under the statute. See, Produce Exchange Stock Clearing Association, supra.

Whether defined geographically by the community that they represent or by the line(s) of business they serve to advance, organizations described in section 501(c)(6) of the Code share the common characteristic of being open to membership for all businesses within their community or line(s) of business. Rev. Rul. 73-411, supra; Rul. 78-225, supra. You state that it is your purpose to serve all businesses and institutions in your area. However, your membership is limited to businesses and institutions that require a certain level of telecommunications services and who agree to sign up for the discounted services offered through you. Where the membership of an organization is limited, the organization fails to meet the requirements for recognition as exempt under section 501(c)(6). See, Retailer's Credit Association, supra; National Muffler Dealers Association, supra; National Prime Users Group, Inc. supra; Guide International Corporation, supra.

You state that the only common business interest shared by your members is their desire to receive telecommunications at a reduced cost, which is to be accomplished through aggregation. However, this interest does not constitute a valid business interest for exemption within the meaning of section 1.501(c)(6)-1 of the regulations.

In Produce Exchange Stock Clearing Association, supra, the court found that serving as a convenience to members is not a shared characteristic of entities falling within the statute. The Court specifically stated that it found no reason apparent for exempting an association that serves each member as a convenience or economy in his business. Providing a convenience or an economy of scale through membership in an organization has consistently been rejected as a valid purpose for recognizing organizations for exemption as business leagues, boards of trade or chambers of commerce. See, Growers Cold Storage Warehouse Co., supra; Evanston-North Shore Board of Realtors, supra; Indiana Retail Hardware Association, Inc., supra. See also, Rev. Rul. 56-65, supra; Rev. Rul. 59-234, supra; Rev. Rul. 66-338, supra.

Section 1.501(c)(6)-1 of the regulations provides that activities carried out by organizations recognized as exempt as under section 501(c)(6) of the Code should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Your primary activity is to provide your members with particular services as set forth below. Your aggregation efforts in order to receive discounted services for your members and your providing particular services to your membership are not the activities of an organization described as exempt under section 501(c)(6) of the Code.

Your members receive the benefit of discounted service from an economy of scale made possible by your recruitment of customers for the telecommunications services offered under your agreement with the telecommunications providers. In this respect you are similar to the organizations discussed in Produce Exchange Clearing Association, supra; Indiana Retail Hardware Association, supra; Apartment Operators Association, supra; Growers Cold Storage Warehouse Co., supra. See also, Rev. Rul. 59-234, supra; Rev. Rul. 66-338, supra; Rev. Rul. 74-81, supra.

In addition, you provide a convenience for your members by relieving them of having to seek out and negotiate for their own telecommunications services; by your serving as a facilitator in establishing and maintaining these services; and, by you serving as a liaison in matters concerning the telecommunications providers. These particular services are like those conducted by the organizations discussed in Credit Bureau of Greater New York, supra and Evanston-North Shore Board of Realtors, supra. The consultation and advice provided to your members on an individual basis regarding their telecommunications needs are the type of particular services provided to businesses that would preclude recognition as an exempt organization under section 1.501(c)(6)-1 of the regulations if such services are the primary activity. See also, National Prime Users Group, Inc. supra; MIB, Inc. v. Commissioner of Internal Revenue Service, supra; Rev. Rul. 56-65, supra.

As in Evanston-North Shore Board of Realtors, supra, and Contracting Plumbers Cooperative Restoration Corp., supra, the fact that there is an assessment made based upon each member's use of a service, in your case the discounted telecommunications services, supports a finding that you are providing your members with a particular service.

In considering the benefit to be conferred by an organization's activities, consideration is given to whether an organization's activities advance the members' interests generally by virtue of their membership in the industry, or whether they assist members in the pursuit of their individual businesses. MIB, Inc., supra. You devote most of your time and resources to providing for telecommunications services to your members. Your general manager and the outside consultant dedicate the majority of their time to this activity. Only 2% of your time and resources is directed towards advocacy and other telecommunications initiatives, an allocation that has remained unchanged since your establishment. As the court stated in MIB, Inc., supra, the fact that your activities may provide indirect and intangible benefits for nonmembers does not change the fact that the services that you provide are in form and substance "particular

services" for your members. Any benefit that the business community as a whole may receive is purely incidental to your organization's primary purpose of providing telecommunications services at a reduced rate to your members. See, National Muffler Dealers Association, supra; Contracting Plumbers Cooperative Restoration Corp., supra.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Manager, Exempt Organizations